

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT

IN THE MATTER OF

K-VA-T FOOD STORES, INC.  
D/B/A FOOD CITY

Cases 9-CA-46125, 9-CA-46126, 9-CA-46127, 9-CA-46152 and 9-CA-46153

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, HEREBY AGREE AS FOLLOWS:

**POSTING OF NOTICE**-Upon approval of this Agreement and receipt of the Notices from the Region, which may include Notices in more than one language as deemed appropriate by the Regional Director, the Charged Party will post immediately in conspicuous places in and about its plant/office, including all places where notices to employees/members are customarily posted, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice (and versions in other languages as deemed appropriate by the Regional Director) made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon.

In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, or other electronic means, if the Charged Party customarily communicates with its employees or members by such means. The electronic posting shall remain posted for 60 consecutive days from the date it was originally posted. The Charged Party will e-mail the Region's Compliance Officer at [jon.grove@nlrb.gov](mailto:jon.grove@nlrb.gov) with a link to the electronic posting location on the same day as the posting. In the event that passwords or other log-on information is required to access the electronic posting, the Charged Party agrees to provide such access information to the Region's Compliance Officer. If the Notice is distributed via e-mail, the charged party will forward a copy of the e-mail distributed to the Regional Compliance Officer.

**READING OF NOTICE** – In consultation with petitioner's compliance officer as to times and locations, the Charged Party shall schedule a meeting or meetings with employees, to ensure the widest possible attendance, at which the attached Notice is to be read by the Charged Party's store manager or a higher ranking official of Respondent, or, at the Charged Party's option, by an agent of the Board in the presence of the Charged Party's store manager or higher ranking official. Such meeting(s) will be held within 21 days of approval of this agreement. The Charged Party will permit an agent of the Board to be present during any such meeting or reading.

**COMPLIANCE WITH NOTICE**-The Charged Party will comply with all the terms and provisions of said Notice.

**BACKPAY AND INTEREST**--- Within 14 days from approval of this agreement the Charged Party will make whole the employee(s) named below by payment to each of them of the amounts of backpay, expenses/reimbursements, interest and frontpay opposite each name. There will be separate checks for backpay and interest. The Charged Party will make appropriate withholdings for each named employee from the checks representing backpay, and front pay where applicable. There will be no withholdings from the checks representing interest or expenses/reimbursements.

**Reimbursement for excess taxes owed** --- The Charged Party will also reimburse the named employees for the difference in taxes owed upon receipt of the lump sum backpay payments below and the taxes that would have been owed had there been no discrimination.

	Backpay	Expenses/Reimbursements	<u>Interest</u>	Frontpay
Glenda Burton	\$25,818.72	\$1,605.56	\$696.00	
Ruth Ann Kirk	\$ 1,596.00		\$ 39.00	
Martha Smith	\$20,908.42	\$2,560.80	\$730.00	\$10,800.78

**REPORTING BACKPAY TO THE SOCIAL SECURITY ADMINISTRATION** --- Within 21 days of the approval of this agreement, the Charged Party will submit the appropriate documentation to the Social Security Administration so that when backpay is paid it will be allocated to the appropriate periods. The Charged Party will provide to the employees named herein a copy of its submission and written notification that this has been done.

**STATEMENTS TO OTHER EMPLOYERS AND REFERENCES---** The Charged Party will not state to any employer or prospective employer, or respond to any credit reference, character or similar inquiry, that the employees named herein were discharged for cause.

**SCOPE OF THE AGREEMENT-** This Agreement settles only the allegations in the above-captioned case(s), and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to that evidence. By approving this Agreement the Regional Director withdraws any Complaint(s) and Notice(s) of Hearing previously issued in the above case(s), and the Charged Party withdraws any answer(s) filed in response.

**REFUSAL TO ISSUE COMPLAINT** — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY.**

Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes \_\_\_\_\_ No \_\_\_\_\_  
Initials Initials

**PERFORMANCE** -Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party from the date of approval and within 6 months from the closing date of this case, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on February 25, 2011, in the instant case(s), excluding paragraph 7(d), and seek the remedial measures set forth in the recommended Order of the Administrative Law Judge's Decision that issued in the instant cases on July 11, 2011. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true

and make findings of fact and co'nclussions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel. The terms of this paragraph are limited to conduct occurring at the Charged Party's Louisa, Kentucky facility.

**NOTIFICATION OF COMPLIANCE-** Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. **If** the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party K-VA-T FOOD STORES, INC. D/B/A FOOD CITY		Charging Party RETAIL, WHOLESALE & DEPARTMENT STORE UNION, UFCW,CLC	
By: Name and Title	Date	By Name and Title	Date
Forrest H. Roles, Attorney		Allen Mayne, Deputy Director of Field Operations	
Recommended By:	Date	Approved By:	Date
Naima R. Clarke, Board Agent		Regional Director Gary W. Muffley	